

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 517 Licensure of Life Support Services

SPONSOR(S): Health Quality Subcommittee; Renner

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N, As CS	Siples	O'Callaghan
2) Local Government Affairs Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The provision of emergency medical transportation services are governed by the Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act, found in part III of ch. 401, F.S.

The Department of Health (DOH) is charged with licensing basic life support (BLS) service providers, advanced life support (ALS) service providers and air ambulances. All license applicants must meet the minimum standards regarding equipment, vehicles, personnel, services, and insurance established by the DOH. However, BLS and ALS service providers must also obtain a Certificate of Public Convenience and Necessity (COPCN) from the county government in which it plans to operate.

Pursuant to s. 401.25, F.S., each county may adopt an ordinance establishing the standards for the issuance of a COPCN. Currently, a county must consider state guidelines, recommendations of local and regional trauma centers, and recommendations of municipalities within its jurisdiction. The bill makes the adoption of such an ordinance mandatory and requires existing COPCN ordinances to be amended to comply with the bill's provisions. The new or amended ordinance must include objective standards regarding the quality and cost of service, such as available equipment and trained personnel. The bill also requires the county commissions to consider recommendations from fire control districts in establishing the standards for the COPCN.

Currently, if a COPCN is denied or revoked, an applicant appeals the decision in accordance with an enacted ordinance, which may include appealing to the county commission that denied or revoked the application or to a court of competent jurisdiction. However, in counties without enacted ordinances, the appropriate forum for an appeal of such decision may be unclear to the applicant. The bill allows an applicant for a COPCN whose application is denied to appeal the decision by writ of certiorari to the circuit court with jurisdiction over the county and the applicant to review the county commission's decision. The bill provides that the applicant must be awarded the COPCN if the court record demonstrates that the applicant will provide service that is superior to the service provided by the current provider, as measured by the objective standards provided in the county's enacted ordinance and state guidelines.

The bill may have an indeterminate, negative fiscal impact on the state court system related to the review of denied COPCN applications in the circuit court having jurisdiction over the county and applicant.

The bill may have an indeterminate, negative fiscal impact on those counties that have to defend denial of COPCN applications in circuit court.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Emergency Medical Services

Part III of ch. 401, F.S., governs the provision of emergency medical transportation services in Florida and is titled the "Raymond H. Alexander, M.D., Emergency Medical Transportation Services Act (Act)."

¹The Act establishes the licensing and operational requirements for emergency medical services.

Emergency Medical Services Advisory Council

The Act creates the Emergency Medical Services Advisory Council (Council)² to act as an advisory body the emergency medical services program within the Department of Health (DOH).³ The Council's duties include:

- Identifying and making recommendations to the DOH regarding the appropriateness of suggested changes to statutes and administrative rules;
- Acting as a clearinghouse for information specific to changes in the provision of medical services and trauma care;
- Providing technical support to the DOH in the areas of emergency medical services and trauma systems design, required medical and rescue equipment, required drugs and dosages, medical treatment protocols and emergency medical services personnel education and training requirements;
- Providing a forum for discussing significant issues facing the emergency medical services and trauma care communities;
- Providing a forum for planning the continued development of the state's emergency medical services system through the joint production of the emergency medical services state plan;
- Assisting the DOH in developing the emergency medical services quality management program;
- Assisting the DOH in setting program priorities; and
- Providing feedback to the DOH on the administration and performance of the emergency medical services program.⁴

Emergency Medical Transportation Services

Basic life support (BLS) service refers to any emergency medical service that uses only basic life support techniques.⁵ BLS includes basic non-invasive interventions to reduce morbidity and mortality associated with out-of-hospital medical and traumatic emergencies.⁶ The services provided may include stabilization and maintenance of airway and breathing, pharmacological interventions, trauma care, and transportation to an appropriate medical facility.⁷

¹ Section 401.2101, F.S.

² Pursuant to 401.245(2), F.S., the Council consists of 15 members appointed by the State Surgeon General, except that state agency representatives are appointed by the respective agency heads. Members are typically appointed for four year terms, with the chair being designated by the State Surgeon General and Secretary of Health. Additional members include six ex officio representatives appointed by various other state agency heads.

³ Section 401.245(1), F.S.

⁴ *Id.*

⁵ Section 401.23(8), F.S.

⁶ Section 401.23(7), F.S., and U.S. Department of Transportation, National Highway Safety Administration, *National EMS Scope of Practice Model 23-24*, available at www.nhtsa.gov/people/injury/ems/pub/emtbns.pdf (last visited Nov. 21, 2015).

⁷ *Id.*

Advanced life support (ALS) service refers to any emergency medical or nontransport service that uses advanced life support techniques.⁸ ALS includes the assessment or treatment of a person by a qualified individual, such as a paramedic, who is trained in the use of techniques such as the administration of drugs or intravenous fluid, endotracheal intubation, telemetry, cardiac monitoring, and cardiac defibrillation.⁹

Air ambulance services refers to a licensed publicly or privately owned service that operates air ambulances to transport persons requiring or likely to require medical attention during transport.¹⁰ An air ambulance is a fixed-wing or rotary-wing aircraft used for, or intended to be used for, the air transportation of sick or injured persons that require or are likely to require medical attention during transport.¹¹

Licensure

Current law requires providers of basic or advanced life support transportation services to be licensed as a BLS service.¹² Air ambulances must also be licensed by the DOH.¹³ The provider must submit an application to the DOH and must include documentation that the applicant meets the requirements for a BLS service or an ALS service.¹⁴ There are currently 233 licensed ALS providers, 8 licensed BLS providers, and 33 licensed air ambulance providers in this state.¹⁵

To be licensed as an BLS or ALS service, an applicant must comply with the following requirements:

- The ambulances, equipment, vehicles, personnel, communications systems, staffing patterns, and services of the applicant meet the statutory requirement and administrative rules for either a BLS service or an ALS service, whichever is applicable;
- Have adequate insurance coverage or certificate of self-insurance for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause for which the owner of such business or service would be liable; and
- A Certificate of Public Convenience and Necessity from each county in which the applicant will operate.¹⁶

In addition to the general licensure requirement, the DOH has provided a list of the equipment and supplies that each BLS vehicle must contain and the equipment and medication each ALS vehicle must contain.¹⁷ Additionally, each BLS and ALS service must employ or contract with a medical director who is a licensed physician to oversee the services it provides.¹⁸

To be licensed as an air ambulance service, an applicant must:

- Submit an application to the DOH with the appropriate fee;
- Specify the location of all required medical equipment and provide documentation that all such equipment is available and in good working order;
- Provide documentation that all aircraft and crew members meet applicable Federal Aviation Administration (FAA) regulations;
- Provide proof of adequate insurance coverage or certificate of self-insurance for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause for which the owner of such business or service would be liable;

⁸ Section 401.23(2), F.S.

⁹ Section 401.23(1), F.S.

¹⁰ Section 401.23(4), F.S.

¹¹ Section 401.23(3), F.S.

¹² Section 401.25(1), F.S.

¹³ Section 401.251, F.S.

¹⁴ *Id.*

¹⁵ E-mail communication with staff of the Department of Health (Nov. 20, 2015) (on file with the Health Quality Subcommittee).

¹⁶ Section 401.25(2), F.S.

¹⁷ See Rule 64J-1.002(4) F.A.C., and Rule 64J-1.003(7), F.A.C., respectively.

¹⁸ Rule 64J-1.004, F.A.C. The medical director must also be board certified, active in a broad-based clinical medical specialty with experience in prehospital care, and hold a certificate in Advanced Cardiac Life Support or its equivalent.

- Specify whether the service uses either fixed-winged or rotary-winged aircraft, or both; and
- Provide evidence that it has employed or contracted with a medical director, if the service provides interhospital air transport, air transport from one hospital to another facility, air transport from hospital to home, or other similar air transport.¹⁹

Additionally, the DOH has provided a list of structural, equipment, and supply requirements that air ambulances must meet for licensure.²⁰ An air ambulance service must also have a safety committee and emergency protocols to address, at minimum, emergency procedures when the aircraft is overdue, when radio communications cannot be established, or when aircraft location cannot be verified.²¹

Certificate of Public Convenience and Necessity

A Certificate of Public Convenience and Necessity (COPCN) is a written statement, issued by the governing board of a county, granting permission for an emergency medical service provider to provide authorized services for the benefit of the population of that county or the benefit of the population of some geographic area of that county.²² At the time of licensure, each provider of life support transportation services must have a COPCN from the county in which it intends to operate.²³ Section 401.25(6), F.S., authorizes each county to adopt an ordinance establishing standards for issuing a COPCN.

The majority of counties, but not all counties, have adopted ordinances to establish a procedure and standards for obtaining a COPCN.²⁴ These ordinances generally provide instructions on the application process, criteria on which the application may be judged, and procedures for appealing a denial, suspension, or revocation of a COPCN with the county commission or a court of competent jurisdiction.

Effect of Proposed Changes

Each county has the authority to adopt an ordinance providing standards for a COPCN, which takes into account state guidelines, recommendations of local and regional trauma centers, and recommendations of municipalities within its jurisdiction. The bill requires each county to adopt such an ordinance or amend an existing ordinance to comply with the bill's provisions. The new or amended ordinance must include objective standards that address the quality and cost of service, such as available equipment and trained personnel. The bill also requires the county commissions to consider recommendations from fire control districts in establishing the standards for the COPCN.

Currently, if a COPCN is denied or revoked, there is no uniform appeal process and an applicant must adhere to the appeal process provided in an ordinance, if the county has enacted such an ordinance. This may include appealing the decision to the county commission that denied or revoked the application or to a court of competent jurisdiction. The bill allows an applicant for a COPCN whose application is denied to appeal the decision by writ of certiorari to the circuit court with jurisdiction over the county and the applicant to review the county commission's decision.²⁵ The bill provides that the applicant must be awarded the COPCN if the court record demonstrates that the applicant will provide service that is superior to the current provider, as measured by the standards set forth in the enacted ordinance in the applicant's jurisdiction and applicable state guidelines.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

¹⁹ Section 401.251, F.S.

²⁰ Rule 64J-1.005, F.S.

²¹ *Id.*

²² Rule 64J-1.001(4), F.A.C.

²³ Section 401.25(2)(d), F.S.

²⁴ Research by Health Quality Staff (on file with subcommittee). Some counties have policies or informal procedures in place for the award of a COPCN to an emergency transportation provider, but have not enacted an ordinance.

²⁵ A writ of certiorari may be used to commence a review of a quasi-judicial decision of any administrative body, agency, board, or commission not subject to the Administrative Procedures Act, unless judicial review by appeal is provided by general law. Fla. R. App. P. 9.190. See also Fla. R. App. P. 9.100(c).

Section 1. Amends s. 401.25, F.S., relating to licensure as a basic life support or an advanced life support service.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The state court system may see an indeterminate, positive fiscal impact from the collection of filing fees associated with providers filing writs of certiorari to appeal the decision of a county commission to deny an application for a COPCN.

2. Expenditures:

The state court system may see an indeterminate, negative fiscal impact from ALS, BLS, or air ambulance providers filing writs of certiorari to appeal the decision of a county commission to deny an application for a COPCN.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

A county that has not enacted an ordinance or needs to amend an existing ordinance establishing standards for issuing a COPCN, as required by the bill, may incur expenses or use resources to enact or amend an ordinance to comply with the bill's provisions.

To the extent that a county commission has to defend its decision to deny the award of a COPCN, a county may accrue legal fees associated with such a legal action.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A state or any of its political subdivisions is preempted from enacting or enforcing any law or regulation that has the force or effect of law related to price, route, or service of any air carrier providing air transportation subject to the provisions of the Airline Deregulation Act.²⁶ In an letter from the General Counsel of the U.S. Department of Transportation, it was opined that the Florida requirement for air ambulances to obtain a COPCN, was preempted by the Airline Deregulation Act of 1978, because it effectively regulates the routes a carrier may fly by limiting them to the counties for which they have obtained a COPCN.²⁷

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2015, the Health Quality Subcommittee adopted an amendment that did the following:

- Requires the standards for certificates of public convenience and necessity (COPCN) for basic or advanced life support services and air ambulance services to be objective and address the quality and cost of services.
- Provides that a court's review of a denial of a COPCN is to be based on the standards set forth in the enacted ordinance in the appellant's jurisdiction and state guidelines.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

²⁶ 49 U.S.C. s. 41713(b).

²⁷ Letter from D.J. Gribbin, General Counsel, U.S. Department of Transportation, to Michael Grief, Assistant General Counsel, Florida Department of Health (Oct. 10, 2007) (on file with the Health Quality Subcommittee).